

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION

*This document relates to:*

Track One-B Cases

MDL 2804

Case No. 17-d-2804

Hon. Dan Aaron Polster

**PHARMACY DEFENDANTS' PROPOSED PRELIMINARY STATEMENT**

Pursuant to the Court's Revised Track One-B Civil Jury Trial Order (Doc #3308), the parties met and conferred but were unable to agree on a proposed preliminary statement. Following is Pharmacy Defendants' proposal:

The Plaintiffs in this lawsuit are the Cuyahoga County and Summit County governments. These county governments have sued several pharmaceutical manufacturers, national distributors and entities associated with national and regional pharmacy chains.

The Manufacturer Defendants sued include Purdue, Mallinckrodt, Janssen, Teva Pharmaceuticals USA, Inc., Cephalon, Inc. and Actavis. The Manufacturer Defendants design, manufacture and advertise prescription opioids pain killers such as oxycodone and hydrocodone, and sell them to national wholesale distributors and pharmacies. The Distributor Defendants sued include AmerisourceBergen, Cardinal, and McKesson. The Distributor Defendants buy prescription opioids from manufacturers and distribute them to hospitals, pharmacies, clinics, and individual prescribers such as doctors and dentists. The Pharmacy Defendants sued include entities associated with several national and regional pharmacy chains: CVS, Discount Drug Mart, HBC Giant Eagle, Rite Aid, Walgreens and Walmart. The Pharmacy Defendants have in-

house distribution centers that, at certain points in time, shipped certain prescription opioid medications to their own or affiliated pharmacies, which used them to fill prescriptions written by doctors or other healthcare practitioners.

The Manufacturer Defendants and Distributor Defendants are not part of this trial. In this trial, you will be asked to decide the county governments' public nuisance lawsuit against only the Pharmacy Defendants.

The county governments allege that the Manufacturer Defendants misrepresented to the medical community and others how dangerous and addictive prescription opioids are. They also allege that the Distributor Defendants failed to monitor, detect, investigate, report, and stop certain suspicious shipments. The county governments allege that some of these shipments went to third parties such as internet pharmacies, pain clinics, independent pharmacies, or so-called "pill mills." All parties agree that the Pharmacy Defendants, by contrast, distributed only to their own pharmacies. The county governments' case against the Pharmacy Defendants rests on their allegation that the Pharmacy Defendants failed to monitor, detect, investigate, report, and stop certain shipments from their own distribution centers to their affiliated pharmacies. Plaintiffs allege that such shipments caused a substantial interference with public health in their counties.

The Plaintiffs do not make any claims against the Pharmacy Defendants based on dispensing prescription opioid medications to their pharmacy customers. Put another way, Plaintiffs do not seek to hold Pharmacy Defendants liable for prescription-filling activities.

The Pharmacy Defendants deny the county governments' allegations of wrongdoing and argue that they did not cause a substantial interference with public health in the Plaintiff counties. Pharmacy Defendants contend that prescription opioid medications are important medicines for the treatment of pain that have been approved and regulated by the United States

Food and Drug Administration and the United States Drug Enforcement Administration, and can only be prescribed by a licensed medical doctor or other healthcare practitioner. Pharmacy Defendants distributed prescription opioid medications only to their own affiliated pharmacies to fill prescriptions issued by licensed doctors or other health care practitioners. Pharmacy Defendants contend that they complied with their obligations, violated no duties, and that their conduct did not cause the harm alleged by the Plaintiffs. Pharmacy Defendants deny that their conduct caused or contributed to a substantial interference with public health.

Dated: September 2, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on September 2, 2020, the foregoing was filed using the Court's CM/ECF filing system and will be served via the Court's CM/ECF filing system on all attorneys of record.

/s/ Robert M. Barnes

Robert M. Barnes